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Supreme Court, U.S.
FILED
OCT - 8 1993
OFFICE OF THE CLERK

No. 93-475

In The

Supreme Court of the United States

October Term, 1993

JERVIS J. WATTLES,
Petitioner,
vs.
THE CITY OF TROY,
a Michigan municipal corporation,
Respondent.

BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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COUNTER-STATEMENT OF QUESTIONS INVOLVED

I.

A. DID THE LOWER COURTS ERR, IN FINDING THAT THE PLAT ACT DID NOT REQUIRE THE RETENTION BASIN BE IDENTIFIED ON THE PLAT ITSELF?

B. WAS THE REQUIREMENT OF AN ADEQUATE STORM WATER DRAINAGE FACILITY TO PREVENT FLOODING, WHICH MUST BE MET PRIOR TO PLAT APPROVAL, A LEGITIMATE POLICE POWER OBJECTIVE AND WAS THE FINDING BY THE LOWER COURTS THAT THE REGULATION DOES NOT AMOUNT TO A "TAKING" ERROR?

II.

DID THE PETITIONER FAIL TO PRESENT A GENUINE ISSUE OF MATERIAL FACT WITH HIS ALLEGATION OF A VERBAL PROMISE MADE BY AN UNKNOWN REPRESENTATIVE OF THE RESPONDENT?

III.

WAS THE CITY OF TROY REQUIRED TO DEDICATE THE 3.8 ACRES OF LAND OF KNOWN AS THE RETENTION BASIN?

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BRIEF IN OPPOSITION
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COUNTER-STATEMENT OF MATERIAL FACTS AND PROCEEDINGS

The Respondent, City of Troy, Michigan, submits that the Petitioner's statement of material facts and proceedings needs correction and supplementation.

In 1966, Petitioner's corporate entity, M & W Development Co., platted two industrial subdivisions in Section 29 of the City of Troy, Michigan. They were named Maplelawn Industrial Park and Maplelawn Industrial Park No. 2. The Petitioner owned, platted, and sold 108 acres of property in Section 29 called Maplelawn Industrial Park and Maplelawn Industrial Park No. 2.

The retention basin, which is the subject of dispute, comprises 3.8 acres within Maplelawn Industrial Park No. 2 and serves to detain storm water from both of the Petitioner's developed industrial subdivisions.

Retention basins are required for all developments in the City of Troy, Michigan. When development occurs, the natural agricultural run off and placement of storm

water is disturbed. Therefore, storm water must be detained to prevent flooding to areas located downstream of the newly developed area. No adequate storm sewer system exists in the City of Troy, Michigan to accommodate storm water run off from new developments. Furthermore, the capacity of existing drains are restricted by regulations of the U.S. Army Corps of Engineers. Therefore, retention basins are as absolutely necessary now as they were in 1966.

It is an undisputed fact that prior to plat approval of the development of the Petitioner's lands, the Petitioner was required and did, therefore, submit an engineering plan which was prepared by the Petitioner's agent, Neree D. Alix, Professional Engineer.

It is equally undisputed that in the plan submitted by the Petitioner's own engineer, dated October 12, 1966, revised November 15, 1966, a "storage basin on Lot 11" and "storage basin easement" is indicated. A revised and nearly identical plan was approved by the Oakland County Drain Commission on January 27, 1966, which likewise indicated a storage basin. **But for the approved engineering plan containing a retention basin, the plat would not have been approved.** Furthermore, the size and location of the retention basin in Lot 11 was decided on by the Petitioner's engineer.

On March 21, 1966 an Agreement was entered into between the Petitioner and Respondent wherein the Petitioner agreed to provide for the retention basin. Petitioner's contention that an adequate underground storm system now exists to serve Maplelawn Industrial Park and Maplelawn Industrial Park No. 2 is unfounded. The Petitioner did not and cannot present evidence to refute the affidavit of Robert Quigley, now retired City Engineer. A retention basin is still necessary to detain storm water run off from the properties of the Petitioner.

Petitioner never objected to the requirement or questioned the size or location of the retention basin in Lot 11 for twelve years.

In September 1978, the Petitioner inquired about reducing the size of the basin. Petitioner's request was reviewed by the City of Troy Engineering Department. More information was required of Petitioner and numerous comments were made.

The Petitioner was not heard from again until July of 1982. At that time the Petitioner was told that an engineering survey, based on current measurements of the basin were needed for a review of the requested reduction in the retention basin's size. The Petitioner never presented the recommended engineering survey.

The Respondent has always maintained that if Petitioner presents current engineering data which clearly shows that the basin may be reduced without causing flooding, then a reduction of the retention basin would be recommended.

Instead of presenting the engineering data, the Petitioner commenced the present litigation. The Petitioner has argued that these facts are irrelevant, yet, the Petitioner bases his entire claim to this Court that he has been denied all economic and productive use of his land. It is apparent that the Petitioner wants to have his cake and eat it, too.

The Petitioner, in his Statement of Material Proceedings and Facts to this Court, has now identified the previously unknown city employee and has presented information of an alleged discussion between Mr. Graham and the Petitioner. The Petitioner has also cited this Court to deposition testimony. **Neither the substance of the alleged discussion, the name of the Respondent's employee, nor the deposition testimony was presented to the trial court.**

The Petitioner, in his Statement of Material Proceedings and Fact to this Court, has alleged that a three count Complaint in this matter was filed on August 26, 1986. It should be noted for the record that the Petitioner's complaint was superseded by the four-count Amended Complaint filed on August 27, 1987.

On January 4, 1990, the trial court granted the Respondent's Motion for Summary Disposition.

The Petitioner appealed and on June 9, 1992, the Michigan Court of Appeals affirmed the dismissal of the Petitioner's complaint.

The Petitioner then filed an Application for Leave to Appeal with the Michigan Supreme Court.

On December 2, 1992, the Michigan Supreme Court denied the Application for Leave to Appeal because the Court was "not persuaded that the questions presented should be reviewed by this Court."

The Petitioner has now sought review with this Court.

COUNTER-STATEMENT OF PROCEDURAL BACKGROUND

On or about March 6, 1989, the Petitioner served the City of Troy, Michigan with a Motion for Summary Disposition and Brief in Support of Summary Disposition. The Petitioner's Motion was brought pursuant to MCR 2.116(C)(10) which provides that: "Except for the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law."

On April 4, 1989, The City of Troy answered the Petitioner's Motion for Summary Disposition and on April 15, 1989, the City of Troy filed a Counter-Motion for Sum-

mary Disposition, which also cited MCR 2.116(C)(10) and alleged that there was no genuine issue as to any material fact and that the City of Troy was entitled to judgment as a matter of law. In support of the Motion for Summary Disposition, the City of Troy filed a brief and attached the affidavit of Robert Quigley, the then City Engineer together with other supporting documents. In the City of Troy's Response to the Petitioner's Brief in Opposition to the City of Troy's Counter-Motion for Summary Disposition, the affidavit of Robert Quigley was resubmitted as well as an affidavit by Singh Bhatia, a Professional Engineer on the city's staff.

The only evidence submitted by the Petitioner in support of his Motion for Summary Disposition and counter to the City of Troy's Motion for Summary Disposition was the affidavit and amended affidavit of the Petitioner and an affidavit by John McMullan, who was a nearby landowner and who did not give an expert opinion.

The Petitioner did not file any deposition testimony or otherwise attempt to substantiate any claimed "verbal agreement" between himself and some unknown City of Troy employee.

Based upon the evidence presented, the trial court issued its OPINION AND ORDER, dated January 4, 1990.

The trial court denied the Petitioner's request for Summary Disposition and granted the Summary Disposition in favor of the City of Troy. The trial court ruled that there was no genuine issue of any material fact that:

1) The Petitioner was required by statute to provide for adequate storm water facilities in his proposed development;

2) The statutory requirement was a legitimate police power objective;

3) The City of Troy did not "take" the Petitioner's land;

4) The retention basin was in fact necessary to contain storm water drainage for the Petitioner's property;

5) The Petitioner did not present any evidence of an oral promise between himself and the City of Troy, rather, the Petitioner only provided proof that he had agreed to the retention basin as a temporary measure, and;

6) The Plat Act did not require that the retention basin be dedicated for public use because the land is not for public use.

The Court of Appeals affirmed the triai court's ruling and held that:

1) The state statute, MCL 560.19a;MSA 26.449(1) required that the Petitioner provide adequate storm drainage facilities in order to receive plat approval for his industrial park;

2) The retention basin is justified as a reasonable means of effectuating a substantial public purpose,to-wit: the prevention of flooding;

3) The Petitioner's land was not taken;

4) The retention basin was in fact necessary to contain the storm water drainage for the Petitioner's property and the Petitioner failed to present sufficient evidence to the contrary;

5) The Petitioner only presented his amended affidavit that he had agreed to the retention basin on a temporary basis, no substantive evidence was submitted in support, and;

6) There was no requirement that the retention basin be dedicated because the basin was re-

quired by law to be maintained upon the proposed area of development and was for the use of the properties platted and sold by the Petitioner and not for public use.

The Michigan Supreme Court denied the Petitioner's Application for Leave to Appeal because they were "not persuaded that the questions presented should be reviewed by this Court".

For the reasons enunciated by the trial court, Court of Appeals and Michigan Supreme Court, the Respondent requests that this Court deny the Petitioner's Writ of Certiorari.

SUMMARY OF THE ARGUMENT FOR DENYING THE WRIT OF CERTIORARI

The Petitioner has exhausted his appellate rights with the Michigan court system.

Three Michigan courts have carefully and thoroughly reviewed all the evidence presented by the Petitioner, the applicable statutes and case law.

To obtain an order of Summary Disposition, the trial court must give any reasonable doubt to the nonmoving party and must be satisfied that no possible factual development could justify recovery for the nonmoving party. *Pantley* v *Garris, Garris & Garris, PC*, 180 Mich. App. 768; 447 N.W.2d 864 (1989), lv den. 435 Mich. 871 (1990). The Petitioner was provided with a full opportunity to rebut and present any and all evidence in support of his motion for Summary Disposition and in opposition to the Respondent's motion for Summary Disposition. Yet, the Petitioner was unable to present a genuine issue of fact which would necessitate a trial on the merits.

The Petitioner's request for Writ of Certiorari on the basis that the Michigan courts have decided this case contrary to this Court's holding in *Lucas* v *South Carolina Coastal Council*, 112 S. Ct. 2886 (1992), should be denied for the reason that the Michigan courts' decisions were in accordance with the U.S Supreme Court decision.

ARGUMENTS FOR DENYING THE WRIT OF CERTIORARI

I.

A. NO GENUINE ISSUE OF ANY MATERIAL FACT EXITS AND THEREFORE, THE LOWER COURTS DID NOT ERR, IN FINDING THAT THE PLAT ACT DID NOT REQUIRE THAT THE RETENTION BASIN BE IDENTIFIED ON THE PLAT ITSELF.

The answer to the Petitioner's question: "Did Jervis Wattles Dedicate His Property To The City of Troy?", is no. The City of Troy was not required to accept a dedication of the Petitioner's land for public use because the land was not appropriated for public use.

While the Petitioner cited the beginning portion of the applicable Michigan statute, MCL 560.19a; MSA 26.449(1), as it read in 1966 and the ending portion of it, the Petitioner failed to include the relevant section of the statute:

> In lieu of providing adequate storm water facilities within the lands proposed for platting, the plattor **may enter into an agreement** with the drain commissioner for the construction of such storm water improvements within a reasonable time and **post a surety bond** for the faithful performance of the agreement. **In its certificate of**

> **approval, if granted, the governing body shall specify that the plat as approved complies with the provisions of this section.** [Emphasis added]

The agreement procedure as set forth in MCL 560.19a; MSA 26.449(1) was followed in the instant case.

On March 21, 1966, the City of Troy and M&W Development Company (Petitioner) entered into an Agreement whereby the Petitioner agreed, as a condition precedent to plat approval, to the installation of the water retention basin.

The Certificate of Municipal Approval, as it appears on the Plat, is reprinted:

> This plat was approved by the City Commission of the City of Troy, Oakland County, Michigan at a meeting held March 14, 1966 and is in compliance with Section 19A, and that the widths of lots is in compliance with the requirements of Section 30, Act 172 of 1929 as amended, and that adequate security has been deposited with the City for the installation of the remaining water and sanitary sewer facilities.

The trial court and the Court of Appeals correctly ruled that there is no genuine issue as to any material fact that the existence of the retention basin was necessary to plat approval.

The Court of Appeals ruled:

> **The basin was required by law to be maintained upon the proposed area of development by plaintiff,** and is for the use of the properties platted and sold by plaintiff. [Emphasis added]

The fact that the plat does not indicate on its face the retention basin is not disputed. The plat does not reflect the retention basin. As a matter of law and pur-

suant to MCL 560.19a; MSA 26.449(1), reference to the retention basin was not required.

The Petitioner's statement in his Petition for Writ of Certiorari, that: "The City gave its written approval in 1966 to the creation of Maplelawn Industrial Park No. 2 without a retention basin", is false. (See page 10 of Petitioner's Writ) The Petitioner well knows, and in fact admitted in his Motion for Summary Disposition in paragraph 4 that the Petitioner's property would need to be served by a retention basin:

> Maplelawn Industrial Park number 2 was created in 1966, the founder being Jervis J. Wattles and Paul B. Moffett. At the time of the initial development of Maplelawn Industrial Park number 2, Wattles and Moffett allowed the southerly 3.8 acres of Lot 11 to be used as a retention basin.

Thus, the Petitioner's claim that the trial court "committed clear error by finding that the Plat Act required a retention basin when the plat itself shows no basin" is defective. The Plat Act did not require that the plat reflect the location, size, or area of the retention basin. The Plat Act allowed for the approval of a proposed plat, without an indication of storm water drainage, if the parties entered into an agreement to provide the facilities in the future.

In this case, the Motion for Summary Disposition was granted to the City of Troy because there was no genuine issue of material fact that the Petitioner "had to provide adequate storm water drainage facilities in order to receive plat approval of his industrial park." The Respondent has not denied this. Instead, the Petitioner seeks to circumvent the statutory requirement and rescind the plat approval on the basis that the retention basin isn't indicated on the plat, ignoring the

fact that the Plat Act does not require the indication on the plat itself.

The Petitioner's argument was not supported by fact or law and therefore was rejected by the trial court, Court of Appeals and Michigan Supreme Court.

I.

B. THE REQUIREMENT OF AN ADEQUATE STORM WATER DRAINAGE FACILITY TO PREVENT FLOODING, WHICH MUST BE MET PRIOR TO PLAT APPROVAL, IS A LEGITIMATE POLICE POWER OBJECTIVE AND THE FINDING BY THE LOWER COURTS THAT THE REGULATION DOES NOT AMOUNT TO A "TAKING" IS NOT ERROR.

The trial court ruled:

> Thus, Plaintiff had to provide adequate storm water drainage facilities in order to receive plat approval of his industrial park. Further, the requirement of adequate storm water drainage facilities to prevent flooding would clearly seem to be a legitimate police power objective.

The trial court's ruling reflects the understanding that the retention basin was necessary as a condition precedent for plat approval and that the condition precedent was a reasonable and legitimate police power objective.

The Petitioner cites to *Lucas*, *supra*, and argues that he has lost all economic benefit of his property from the regulation and the necessity of the retention basin.

In *Lucas*, *supra* at 812, this Court identified two "discrete categories of regulatory action as compensable without case-specific inquiry into the public interest advanced in support of the restraint." The first, involved regulation which caused a property owner to suffer a physical invasion of his property. The second,

involved situations where the regulation denied "all economically beneficial or productive use of land". *Lucas*, *supra* at 813.

What must be remembered is that the Petitioner owned and platted 108 acres of land into what is now referred to as Maplelawn Industrial Park and Maplelawn Industrial Park No. 2. In order to insure that the development of the Petitioner's property would not endanger other properties and would retain its own storm water drainage, the retention basin was necessary.

The City of Troy did not plunder the Petitioner's land. The City of Troy regulated the usage of 3.8 acres of 108 acre parcel, which was based in part on the type of development proposed and created by the Petitioner. The trial court and the Court of Appeals understood the distinction.

The Petitioner was required by MCL 590.19a to provide for adequate storm water facilities within the lands proposed for platting. Storm water retention basins are required by MCL 590.19a where they are deemed necessary.

It is an undisputed fact that no adequate underground storm system exists in the City of Troy to accommodate new development. Storm water retention basins are always required by the City of Troy, Michigan and by the Oakland County Drain Commission prior to plat approval. Adequate storm water retention was a prerequisite to development and marketability of the Petitioner's land. Therefore, nothing has been "taken" from the Petitioner.

The Petitioner has profited from the sale of every parcel of land in both industrial subdivisions.

The Petitioner, by and through his own engineer, determined the location of the retention basin which

Petitioner presented for the new development of the area.

Petitioner's situation of having sold all parcels of land except the retention basin, needed to detain storm water for those parcels sold, is self-created and not a taking by the Respondent.

Therefore, the Petitioner's claim that he has been denied all economic beneficial and productive uses of his land is inaccurate.

Furthermore, the Petitioner's claim that the development of the 3.8 acres, would not harm neighboring land was not directly at issue at the trial court level. The trial court did however, hold that the Petitioner failed to raise a genuine issue of material fact regarding the necessity of the retention basin. Specifically, the trial court held that:

> The observations of the non-expert adjoining lot owner that the basin almost always appears dry, does not raise a fact issue, given that Defendant submitted an affidavit from its engineer stating that the basin would almost always appear dry if working properly.

The Court of Appeals also commented on this issue:

> Plaintiff contends that the area surrounding Maplelawn Industrial Park 2 had adequate storm water drainage based on the fact that an insignificant amount of water had accumulated in the retention basin over the past twenty-two years . . . the affidavit of McMullen simply repeats the allegations in plaintiffs complaint and fails to provide any evidence of the existence of a genuine issue of material fact as to whether a taking has occurred.

Therefore, the trial court and Court of Appeals correctly ruled that there is no genuine issue as to any material fact and the Respondent was entitled to judgment as a matter of law.

II.

THE TRIAL COURT'S RULING IS NOT CLEARLY ERRONEOUS WHERE THE PETITIONER FAILED TO PRESENT A GENUINE ISSUE OF MATERIAL FACT BY ITS ALLEGATION OF A VERBAL PROMISE MADE BY AN UNKNOWN REPRESENTATIVE OF THE RESPONDENT.

The Petitioner's legal theory is grounded on the "unlawful taking" of the Petitioner's property a portion of which was reserved for a water retention basin for purposes of plat approval and development.

The Petitioner claims that the lower courts erred in not allowing the Petitioner his day in court based upon an issue of fact raised by his affidavit.

The relevant portion of the amended affidavit of the Petitioner is as follows:

> 2. In 1966 my business partner, Paul B. Moffet, and I created and developed Maplelawn Industrial Park Number 2. At the time of the development of Maplelawn, Moffet and I agreed to use the southerly 3.8 acres of Lot 11 as a temporary retention basin until the City of Troy installed storm sewers along Crooks Road. [underline appears in original]

The trial court reviewed the amended affidavit of the Petitioner, and determined that the amended affidavit:

> . . . states only that he and his business partner agreed to use the disputed land as a temporary basin until the storm sewers were installed.

> Plaintiff made no specific allegations regarding who, on behalf of the City of Troy, entered into such an agreement with Plaintiff and his business partner, when or where the agreement was made, or the substance of the alleged agreement Plaintiff-Appellant alleges.

The Court of Appeals ratified the trial court's rationale and held:

> Plaintiff's claim that he had an agreement with the City that the basin would only be temporary was unsupported. Plaintiff's amended affidavit stated only that he and his business partner, Paul Moffet, had agreed that the basin would be temporary. Plaintiff never produced any evidence regarding the date of the alleged agreement with the City or the substance of the agreement. There was no evidence, beyond plaintiff's own allegations, to prove that an agreement existed outside of the scope of the plat act of 1929, MCL 560.19a; MSA 26.449(1).

While the Petitioner did attach a portion of his deposition to his brief on appeal to the Court of Appeals and in his Leave to Appeal to the Michigan Supreme Court, a thorough review of the documents filed with the trial court reveals that the deposition testimony **was not** presented to the trial court. Furthermore, according to the documents filed at the time of the Motion for Summary Disposition, the name of "Dick Graham, City Engineer for Troy" was not provided or mentioned by the Petitioner and the Petitioner never argued that there was an oral promise.

The Petitioner now asks this Court to "focus" on the fact that the City allegedly did not contradict the Petitioner's "evidence" and thereafter bootstraps his argument that there is a genuine issue of material fact.

It was the Petitioner's lack of evidence and lack of "genuine fact" which allowed the imposition of summary disposition.

The Petitioner takes the affidavit, which makes no mention of who entered into the agreement, when the agreement occurred, the full substance of the agreement etc., and magically translates it into oral promise.

The Petitioner's unsubstantiated and vague affidavit was refuted and negated by the Respondent by 19½ years of reality.

The lower courts properly ruled that the Petitioner did not present any relevant evidence to raise a genuine issue as to any material fact. The Petitioner's reference to *Vergote* v *K-Mart Corporation*, 125 Mich. App. 48; 337 N.W.2d 229 (1983), and its ruling is not controlling. In *Vergote, supra*, the plaintiff had specifically alleged that an oral promise was made by the defendant. The plaintiff in *Vergote, supra*, also presented his deposition testimony which the court believed raised a genuine issue of material fact.

The Petitioner's evidence was lacking even viewed in the light most favorable to the Petitioner. Therefore, no error was committed.

III.

THE CITY OF TROY DID NOT DEDICATE NOR WAS IT NECESSARY TO DEDICATE THE 3.8 ACRES OF LAND OF KNOWN AS THE RETENTION BASIN.

The Petitioner's land known as the retention basin located on Lot 11 of Section 29 was not dedicated to the public for public use.

The retention basin is not used by the public. Obviously, there is a benefit to the public by the retention

basin's existence, however, the size, location and actual existence depended on the proposed development of the surrounding lands owned by the Petitioner.

As stated by Robert Quigley, Professional Engineer, retired City Engineer, in ¶6 of his affidavit:

> A basin for storm water retention was and is necessary in Maplelawn Industrial Park No. 2 to provide for the retention of storm water **due to the development of other parcels of land by Mr. Wattles in the industrial subdivision.** [Emphasis added].

The Petitioner's allegation that the City of Troy misstated a fact to the trial court in its Motion for Summary Disposition is in error.

The retention basin was necessarily required, by law and fact, to be maintained based upon the proposed development of the Petitioner's land. The Petitioner does not deny this. The City of Troy did not acquire an interest in the property as the Petitioner continues to contend.

The Petitioner owned, platted, and sold 108 acres of property in Section 29 called Maplelawn Industrial Park and Maplelawn Industrial Park No. 2.

The retention basin comprises 3.8 acres within Maplelawn Industrial Park No. 2 and serves to detain storm water from both of the Petitioner's developed industrial subdivisions.

The benefit to the public is that the water run off from the Petitioner's lands will be retained in the water retention basin instead of flowing downstream to inadequate storm water drainage facilities.

The retention basin, in essence, is a requirement that the Petitioner's land, as developed, provide for its own

remedy to the storm water drainage problem confronted by all land users and developers.

Furthermore, the Petitioner has been informed on numerous occasions that if he presented engineering plans which demonstrated compliance with applicable codes and ordinances, a reduction in the size of the retention basin may be affected.

The trial court properly ruled and the Court of Appeals correctly affirmed that there exists no genuine issue of any material fact that the retention basin is for the use of the properties as platted and sold by the Petitioner and a dedication of the land in question was not necessary.

The Petitioner now claims that the City of Troy has an interest in the retention basin based upon a memorandum dated March 14, 1966. The March 21, 1966 Agreement entered into between the Petitioner and the City of Troy is the same type of agreement anticipated by the Plat Act, MCL 560.19a; MSA 26.449(1), which is again recited in part for the Court:

> In lieu of providing adequate storm water facilities within the lands proposed for platting, the plattor **may enter into an agreement** with the drain commissioner for the construction of such storm water improvements within a reasonable time and **post a surety bond** for the faithful performance of the agreement.

Thus, the Plat Act specifically allowed for an agreement of the sort involved between the Petitioner and the City of Troy and is not in conflict with the Michigan Statute of Frauds.

The Petitioner attacks the written agreement entered into between the City of Troy and the Petitioner, yet did not raise this issue with the trial court. Perhaps,

because the Petitioner knows full well that the agreement was entered into and was complied with by the Petitioner.

CONCLUSION

The Plat Act required that the Petitioner provide for adequate storm water drainage before the planned development of his land could be approved. This was undisputed.

The Petitioner in fact complied with the requirement and provided for a retention basin, 3.8 acres in size, to accommodate his 108 acre area of development.

The Plat Act did not require that the retention basin be identified within the plat itself.

The Plat Act provided for the approval of a proposed plat before the storm water drainage was completed by the submission of an Agreement to that effect.

The Petitioner complied with the requirements of the Plat Act, entered into an Agreement and created the necessary retention basin.

The alleged verbal agreement was summarily dismissed by the lower courts because the Petitioner never presented any evidence that an "oral promise" existed. This is not error.

The fact remains that the Petitioner has developed the full 108 acres of his land and the retention basin is just as necessary now as it was back in 1966.

The Petitioner has been told repeatedly that if he could submit data that would allow a reduction in the size of the retention basin, the City of Troy would act upon such a request. The Petitioner has refused to accept the offer and instead wants the City of Troy to

purchase the retention basin on the theory of "taking" without compensation.

The trial court and Court of Appeals did not err and the Michigan Supreme Court rightfully found that the Petitioner's arguments are not supported by fact or law.

PRAYER FOR RELIEF

Therefore, the Respondent respectfully requests that this Honorable Court affirm the trial court and Court of Appeals decision, deny the Petitioner's request for Writ of Certiorari, and order any other relief as this Court deems just and equitable, including reasonable attorney fees expended by the Respondent in the defense of this matter.

Respectfully submitted,

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